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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN DIEGO, CENTRAL DISTRICT

11
12 KPBS,

13 Petitioner/Plaintiff,

14 v.

15 SAN DIEGO COUNTY SHERIFF'S
DEPARTMENT; WILLIAM D. GORE, IN
16 HIS CAPACITY AS SHERIFF OF SAN
DIEGO COUNTY; and DOES 1-20,

17 Respondents/Defendants.
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Case No. 37-2019-00003822-CU-WMA-CTL

**VERIFIED PETITION FOR WRIT OF
MANDATE PURSUANT TO THE
CALIFORNIA PUBLIC RECORDS ACT
AND THE CALIFORNIA
CONSTITUTION AND COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF; REQUEST FOR
ATTORNEY'S FEES AND COSTS**

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

01/22/2019 at 11:33:13 AM

Clerk of the Superior Court
By Tamara Parra, Deputy Clerk

1 **VERIFIED PETITION FOR WRIT OF MANDATE/COMPLAINT FOR INJUNCTION**
2 **AND DECLARATORY RELIEF**

3 Petitioner/Plaintiff KPBS alleges as follows:

4 **THE PARTIES**

5 1. KPBS is a public broadcaster affiliated with San Diego State University. Its
6 principal place of business is San Diego County, California. KPBS disseminates news via its local
7 radio and television stations as well as through its website on a local, state, national, and
8 international basis. (Declaration of Claire Trageser, hereafter “Trageser Decl.,” ¶ 2.)

9 2. Respondent/Defendant San Diego County Sheriff’s Department (the “Department”
10 or the “Sheriff’s Department”) is the chief law enforcement agency in San Diego County. The
11 Sheriff, who is elected by residents of San Diego County, is the chief executive of the Department.
12 (Trageser Decl. ¶ 3.) The current Sheriff of San Diego County is William D. Gore. (*Id.*)

13 3. Under the California Public Records Act (Gov. Code § 6250, *et seq.*, hereafter the
14 “CPRA”), the Department is a “local agency.” (Gov. Code § 6252, subd. (a).) As such, its
15 records are subject to the provisions of the CPRA. (Gov. Code § 6252, subd. (e).) Thus, the
16 Department has a duty to provide the public with the ability to inspect and obtain copies of its
17 records that are not expressly made exempt from disclosure by the provisions of the CPRA, and to
18 the extent any record contains both exempt and non-exempt information to provide the public with
19 any reasonably segregable non-exempt information contained in its records. (Gov. Code §§ 6523,
20 6255.)

21 4. As discussed in detail below, KPBS, through its reporter Claire Trageser, requested
22 the public records that are at issue in this litigation from the Department pursuant to the California
23 Public Records Act. (Trageser Decl. ¶ 4, Ex. A.) The Department denied the requests. (Trageser
24 Decl. ¶ 5, Ex. B; Chadwick Decl. ¶¶ 3, 6, exs. B, D.) KPBS has a beneficial interest in obtaining
25 the public records because it reports on the Department and its activities, and because KPBS’s
26 fundamental right of access to public records has been impaired by the Department’s refusal to
27 provide reasonably segregable information contained in records of the Department. (See Gov.
28 Code § 6250, *et seq.*)

5. KPBS and its reporter, Ms. Trageser, have the constitutionally protected right to gather and report news about the Sheriff's Department under the First Amendment to the United States Constitution and the California Constitution (art. I, §§ 2-3). They also have a protected right of access to the public records requested under the California Public Records Act and under the California Constitution. (Gov. Code §6250, *et seq.*; Cal. Const., art. I, § 3.) The Department's denial of public access to the records KPBS requested violates these statutory and constitutional rights of access to public information.

6. KPBS therefore petitions this Court for a writ of mandate or other appropriate relief directing the Department and the Sheriff to fulfill their duties under the law to disclose the public records requested by KPBS. In addition, KPBS seeks a declaration of its right to obtain the information it has requested and which the Department has refused to provide, and an injunction requiring the Department and the Sheriff to provide the requested information.

FACTUAL BACKGROUND

7. On June 22, 2018, KPBS reporter Ms. Trageser sent an email to the Department's media relations email address. In her email, she requested that the Department provide:

1. The dates all complaints were filed from 2011 through 2018.
2. The dates the sheriff's department initially responded to each complaint

(Trageser Decl. ¶ 4, Ex. A.) KPBS sought these records, in part, to investigate concerns about the Department's conduct and practices in responding to citizen complaints regarding officers of the Department. (*Id.*)

8. On July 2, 2018, Amanda Lomnicky, Legal Advisor in the Sheriff's Department, sent a letter to Ms. Trageser denying her request. In denying the request, Ms. Lomnicky invoked Government Code section 6254, subdivisions (f) and (k), as well as Penal Code section 832.5, by which she evidently intended to refer to Penal Code section 823.7. (Trageser Decl. ¶ 5, Ex. B.)

9. On July 5, 2018, counsel for KPBS sent a detailed letter to Ms. Lomnicky explaining that records disclosing the information sought by KPBS were subject to mandatory disclosure and were not exempt from disclosure under either the CPRA or the Penal Code. (Declaration of James Chadwick, hereafter “Chadwick Decl.,” ¶ 2, Ex. A.)

1 10. On July 16, 2018, Sanford Toyen, Legal Advisor in the Sheriff's Department, sent
2 a letter to KPBS's counsel expressing the Department's disagreement with KPBS's position and
3 again denying the CPRA request. (Chadwick Decl. ¶ 3, Ex. B.)

4 11. Meanwhile, counsel for KPBS communicated with the San Diego Police
5 Department, regarding a separate request by KPBS seeking to obtain the same type of records
6 requested from the Sheriff's Department. Unlike the Sheriff's Department, the Police Department
7 agreed to provide a representative sample of the requested records, which were provided to KPBS
8 on August 30, 2018. (Chadwick Decl. ¶ 4.)

9 12. In an effort to avoid litigation, counsel for KPBS sent an additional detailed letter
10 to Mr. Toyen on October 5, 2018, explaining that the Department's interpretations of relevant
11 legal authorities were in error and reiterating that the CPRA required disclosure of the requested
12 records. (Chadwick Decl. ¶ 5, Ex. C.) The letter also informed Mr. Toyen that the San Diego
13 Police Department had already complied with the request by KPBS for essentially identical
14 records of the Police Department. (*Ibid.*)

15 13. The Sheriff's Department responded on October 22, 2018, with a brief letter
16 indicating that the Department's position was unchanged. (Chadwick Decl. ¶ 6, Ex. D.)
17 Litigation thus became the only method by which KPBS could obtain the records to which it is
18 entitled by statute and by the California Constitution.

19 14. As indicated by the correspondence from the Department, in denying access to the
20 records requested by KPBS, the Department's representatives were acting on behalf of the Sheriff,
21 William D. Gore, and the Sheriff is the public official responsible for the denial of KPBS's
22 requests.

23 **SUMMARY OF LEGAL AUTHORITY**
24 **IN SUPPORT OF THIS ACTION**

25 15. The legal authority supporting this action will be set forth more fully in an
26 anticipated motion for judgment (see Local Rule 2.4.8(A)), but the essential legal basis for the
27 action is summarized here.

1 16. The requested records are public records subject to the CPRA. “‘Public records’
2 includes any writing containing information relating to the conduct of the public’s business
3 prepared, owned, used, or retained by any state or local agency regardless of physical form or
4 characteristics.” (Gov. Code § 6252, subd. (e).) The CPRA requires all public records to be made
5 available for immediate inspection unless they are exempt from disclosure pursuant to the express
6 provisions of the CPRA itself. (Gov. Code §§ 6253, 6255, subd. (a).) The CPRA provides that
7 when it is shown that public records are being improperly withheld, “the court shall order the
8 officer or person charged with withholding the records to disclose the public record or show cause
9 why he or she should not do so.” (Gov. Code § 6259, subd. (a).)

10 17. There is no exemption applicable to the requested records. Specifically, Penal
11 Code section 832.7 does not apply because KPBS does not seek “personnel records.” Even if the
12 records KPBS seeks were considered personnel records, they would be subject to the exemption
13 provided by Penal Code section 832.7, subdivision (d). In any event, the Penal Code only limits
14 disclosure of information that can be linked to a named officer, and KPBS does not seek such
15 information. (*Comm. on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th
16 278, 295.)

17 18. Government Code section 6254, subdivision (f) does not provide an exemption
18 from disclosure either. KPBS is seeking only the dates of complaints and responses thereto, not
19 the complaints themselves, and it is therefore not seeking any “[r]ecords of complaints to . . . [a]
20 state or local police agency.” (Gov. Code § 6254, subd. (f).) Even if the information KPBS seeks
21 were subject to the general exemption provided by Section 6254, subdivision (f), the information
22 would then also be subject to the exception to the exemption provided by section 6254,
23 subdivision (f)(2).

24 19. KPBS has no plain, speedy, or adequate remedy at law to enforce its rights and
25 those of the public other than the relief sought herein. KPBS has no other means to compel the
26 Sheriff’s Department to produce the public records requested, and for which disclosure has been
27 denied in violation of the law. (See Gov. Code § 6250 *et seq.*; Cal. Const., art. I, § 3.) The
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1 Department's failure to produce the public records will continue absent an order from this Court
2 granting the relief sought here.

3 20. KPBS has performed all conditions preceding the filing of this action and
4 exhausted all remedies to obtain access to the public records requested from the Department.

5 21. KPBS, in bringing these proceedings, has incurred attorney's fees and costs in an
6 amount to be determined. Fees and costs will continue to be incurred to enforce important rights
7 affecting the public interest, and KPBS seeks reimbursement of the fees and costs as required by
8 the CPRA. (Gov. Code § 6259, subd. (d).)

9 22. An actual case or controversy exists between the parties in that KPBS believes and
10 asserts that it is entitled to access to the public records it requested under the CPRA and through
11 its constitutionally protected newsgathering rights, and the Sheriff's Department disagrees and has
12 denied access to the records requested. (Gov. Code § 6250 *et seq.*)

13 23. The Department's violations of law set forth above will continue unless and until it
14 is commanded by this Court to produce the public records requested and to not engage in such
15 further violations of law by a declaratory judgment declaring its conduct unlawful. Additionally,
16 absent injunctive relief the Department will continue to withhold public information as it has done
17 here, resulting in great and irreparable injury to KPBS and the public at large by depriving them of
18 immediate access to information vital to the public interest and necessary for self-government.
19 KPBS has no adequate remedy at law, because the relief it seeks does not consist of monetary
20 compensation but rather the enforcement of its statutory and constitutional rights of access, and
21 the harm it has suffered through the Department's refusal to provide access to information that is
22 required to be disclosed under California law cannot be compensated through an award of
23 monetary damages.

24 **PRAYER**

25 WHEREFORE, KPBS prays:

26 1. For a writ of mandate ordering the San Diego County Sheriff's Department and the
27 Sheriff to provide the records requested by KPBS pursuant to the CPRA (Gov. Code §6250, *et*
28 *seq.*) and the California Constitution (Cal. Const. art. I, § 3);

2. For an order granting declaratory and injunctive relief, including, but not limited to, declaring the withholding of access to the public information sought by KPBS to be in violation of the law, enjoining the Department and the Sheriff to provide the requested information, and enjoining the Department and the Sheriff from engaging in the wrongful withholding of such information in the future;

3. For attorney's fees and costs; and

4. For such further relief as this court deems just and proper.

Dated: January 22, 2019

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By

JAMES M. CHADWICK
MATTHEW G. HALGREN
Attorneys for KPBS

1 **VERIFICATION**

2 I, James M. Chadwick, declare as follows:

3 1. I am counsel for KPBS, the Petitioner in the above-named action and I am
4 authorized to make this verification on its behalf.

5 2. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE
6 PURSUANT TO THE CALIFORNIA PUBLIC RECORDS ACT AND THE CALIFORNIA
7 CONSTITUTION AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF;
8 REQUEST FOR ATTORNEY'S FEES AND COSTS and know the contents thereof, and certify
9 that the same are true of my own knowledge, except as to the matters which are stated on
10 information and belief, and as to those matters, I believe them to be true.

11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct.

13 Executed this 22nd day of January, 2019, at San Diego, California.

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16 A handwritten signature in blue ink, appearing to read "James M. Chadwick", is written over a horizontal line.
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